

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

August 9, 2022

FROM

BRENDON BIGGS, Director, Department of Public Works – Transportation

SUBJECT

Agreements with Speedway SBC Development, LLC and Union Pacific Railroad for Advance Payment and Reimbursement of Preliminary Engineering Services for the Auto Club Speedway Project – San Bernardino Avenue

RECOMMENDATION(S)

1. Approve **Agreement No. 22-479** with Speedway SBC Development, LLC, for an advance payment in the amount of \$62,000 and reimbursement for actual costs, in excess of the advance payment, for preliminary engineering services, including San Bernardino County staff labor and Union Pacific Railroad Company work, necessary for the Auto Club Speedway Project – San Bernardino Avenue, effective upon execution by both parties through completion of the project and final payment from Speedway SBC Development, LLC or on December 30, 2027, whichever occurs first.
2. Approve **Agreement No. 22-750** with Union Pacific Railroad Company in the amount of \$50,000 for preliminary engineering services to be performed by Union Pacific Railroad Company necessary for the Auto Club Speedway Project – San Bernardino Avenue, effective upon execution by both parties and shall terminate upon completion of the project and final payment for preliminary engineering work performed.

(Presenter: Brendon Biggs, Director, 387-7906)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The Auto Club Speedway Project – San Bernardino Avenue at the Union Pacific Railroad crossing in the Fontana area (Project) requires preliminary engineering services (PE), which are estimated to cost \$62,000, to be paid by the Speedway SBC Development, LLC (Developer). The Project will be funded entirely by the Developer, including any reimbursement for actual costs in excess of the advance payment. Upon execution of the proposed agreement, the Developer will provide an advance payment of \$62,000 to San Bernardino County (County) to fund all PE work associated with the Project. The advance payment will be disbursed to Union Pacific Railroad Company (UPRR) for the necessary PE work and to the County for staff labor costs necessary for County oversight of the PE work. Sufficient appropriation and revenue are included in the Department of Public Works (Department) 2022-23 Road Operations budget (6650002000 71H15191).

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BACKGROUND INFORMATION

The Developer intends to construct development in, and make road improvements to, the area surrounding the Auto Club Speedway in the Fontana area. The Project proposes land uses that include, but are not limited to, logistics and e-commerce uses, ancillary commercial uses, and vehicle parking/drop lot areas. The Project would also develop greenbelts, public roads, and water detention areas. The proposed agreements are required because the Project affects a portion of San Bernardino Avenue that is located within County's unincorporated area of Fontana, and UPRR tracks. Rule 3.7 of the California Public Utilities Commission's (CPUC) Rules of Practice and Procedure requires that applications for modification of at-grade railroad crossings must be submitted by a municipal, county, state, or other governmental authority. The application must include plans and specifications of the proposed modification. Since San Bernardino Avenue is a County-maintained road that crosses the UPRR tracks, the UPRR requires the County to contract with UPRR for the preparation of the plans and specifications. The improvements to San Bernardino Avenue include a small reconfiguration of the intersection, modification of the at-grade railroad crossing, and pavement striping. The Developer will obtain a permit from County for work to be performed within the County's right-of-way.

Approval of Recommendation No. 1 will result in an agreement between the County and the Developer for advance payment and reimbursement, whereby the County will serve as a representative for the Developer as it relates to UPRR PE work. Upon execution of the agreement, the Developer will provide an advance payment in the amount of \$62,000 for Project related PE work and County labor staff costs. The County will provide to the Developer an itemized accounting of the incurred costs upon Project completion. If incurred Project costs are less than the advanced payment, County will refund any remaining funds to the Developer. If the incurred costs are greater than the Developer's advanced payment, then the County will submit a final invoice to the Developer for outstanding costs. The agreement between the County and the Developer shall terminate upon completion of the Project and final payment from the Developer, or on December 30, 2027, whichever occurs first.

Additionally, pursuant to the agreement between County and the Developer, the County will enter into an agreement with UPRR for the Project's PE work. Approval of Recommendation No. 2 will result in an agreement between the County and the UPRR. UPRR, as the owner and operator of the railroad crossing at San Bernardino Avenue, will perform the PE work necessary for the Project. UPRR will submit reimbursement requests to the County for completed PE work, and upon receipt of invoice, the County will pay UPRR utilizing the Developer's advance payment up to \$50,000. The contract amount with the Developer includes \$50,000 to reimburse UPRR and \$12,000 to reimburse the County for staff labor costs, for a total of \$62,000. The County will review for approval all plans related to the proposed improvement on San Bernardino Avenue. The agreement between the County and the UPRR shall terminate upon completion of the Project and final payment for PE work performed.

Approval of this item meets the County and Chief Executive Officer's goals and objectives by working with the Developer and UPRR in an effort to ensure the development of a well-planned, balanced, and sustainable County.

The Developer approved the agreement on July 7, 2022, and UPRR will sign the proposed agreement upon approval by the Board of Supervisors.

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PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Aaron Gest, Deputy County Counsel, 387-5455) on July 14, 2022; Finance (Carl Lofton, Administrative Analyst, 387-5404) on July 22, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on July 26, 2022.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Dawn Rowe Seconded: Col. Paul Cook (Ret.)

Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: August 9, 2022



cc: PW/Trans - Chun w/agree for sign
Contractor - C/O PW/Trans w/agree
File - w/agree w/map

CCM 08/15/2022